

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANCIS HENRY RUGGIERO,

Plaintiff,

-against-

C.O. LARRY WAY,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 2/16/2022

19-CV-3631 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge

Plaintiff Francis Henry Ruggiero (“Plaintiff”), proceeding *pro se*, commenced this action under 42 U.S.C. § 1983, alleging, *inter alia*, that Defendants C.O. Larry Way and Sgt. R. Browne violated his rights under the First, Eighth, and Fourteenth Amendments of the United States in connection with his treatment as an inmate at Fishkill Correctional Facility. (*See* First Amended Complaint, ECF No. 16.) On July 20, 2021, this Court issued an order directing Plaintiff to show cause in writing by August 20, 2021 why this action should not be dismissed without prejudice for want of prosecution pursuant to Fed. R. Civ. P. 41(b). (ECF No. 65.)

As discussed in the order to show cause (*id.*), Plaintiff did not file a Second Amended Complaint after the Court granted Defendants’ unopposed motion for partial dismissal on August 31, 2020. (*See* ECF No. 44.) Plaintiff has taken no action in this matter since notifying the Court of a change of address following his release from prison on December 30, 2019. (ECF No. 43.) Plaintiff failed to appear at several conferences before Magistrate Judge Judith C. McCarthy and was expressly warned in a scheduling order that failure to appear at conferences may result in sanctions, including dismissal of the action for failure to prosecute. (ECF No. 53.) Subsequently, on April 2, 2021, Defendant submitted a letter to the Court requesting dismissal of the action, or in the alternative, permission to file a motion to

dismiss the case for failure to prosecute. (ECF No. 54.) The Court denied the request without prejudice and directed Defendant to reach out to Plaintiff to confirm whether he intended to move forward with the litigation or would be amendable to voluntarily dismissing the action. (ECF No. 55.) Defendant subsequently reached out to Plaintiff via letter on June 23, 2021 to confirm the same and has not responded as of July 15, 2021. (ECF No. 64.)

Plaintiff has failed to respond to the Court's July 20, 2021 Order. As the Court warned in its Order, pursuant to Federal Rules of Civil Procedure Rule 41(b), the Court dismisses Plaintiff's action without prejudice.

The Clerk of Court is respectfully directed to close the case and to mail a copy of this Order to Plaintiff at his address listed on ECF and to show service on the docket.

Dated: February 16, 2022
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge